IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8437 of 2002
with
SPECIAL CIVIL APPLICATION No 8438 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FARSHUBHAI PRABHURAMBHAI KAKKAD
Versus
DIRECTOR OF INCOME - TAX (INVESTIGATION)

Appearance:
1. Special Civil Application No. 8437 of 2002
MR J.P. SHAH for the Petitioner
MR SN SHELAT, ADVOCATE GENERAL with MR MANISH R BHATT
for the Respondents

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 17/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Looking to the fact that both the petitioners are partners in M/s. J.P. Finance, and as facts of both the petitions are similar, at the request of the learned advocates, both the petitions are heard together.

2. Looking to the facts of the case, rule is issued in both the petitions. Shri M.R. Bhatt, learned Sr. Standing Counsel for the Central Government, appears for the respondents in both the petitions and waives service of rule. At the request of the learned advocates, both the petitions are finally heard today.

3. The petitioners in both the petitions challenge the validity of an authorization issued by the Addl. Director of Income-tax (Investigation), Ahmedabad, in favour of respondent No. 2 dated 21st June 2002 under the provisions of sec. 132 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

4. It has been submitted by the learned advocate for the petitioners that the Additional Director of Income-tax is not competent to issue such an authorization because such an authorization can be issued only by the Director of Income-tax under the provisions of the Act. In reply to the said submission made by learned advocate Shri Shah, the learned Advocate General has submitted that in a given case, the Addl. Director of Income-tax can also issue authorization and he has relied upon a judgment to that effect. We do not propose to go into the above-referred issue especially when we are of the view that the satisfaction recorded by the Addl. Director of Income-tax is not just and proper for the reasons stated hereinbelow.

5. The facts giving rise to the present petitions, in a nutshell, are as under :

5.1 On 21st June 2002, the premises of one Shri Pravinbhai Kakkad had been searched by the respondent authorities under the provisions of sec. 132 of the Act and a sum of Rs. 4,50,000/- was found at the time of the search. Shri Pravinbhai Kakkad was asked as to what he was doing, and in pursuance of the said question he had submitted that formerly he was associated with Asopalav Group, but before 5-6 years he had disassociated himself from the Asopalav Group and, thereafter he had started doing sharafi business in partnership in the name of M/s.

J.P. Finance and the Rs. 4,50,000/- found at his residence belonged to his firm. He had submitted that the petitioners in these two petitions were partners of M/s. J.P. Finance.

5.2 Upon getting the above-referred information, the respondent authorities had decided to have search at the residence of the present petitioners, who are partners of M/s. J.P Finance.

5.3 It is pertinent to note that when the decision with regard to having search in case of members of Asopalav Group under sec. 132 of the Act had been taken, the respondent authorities had also come to know that M/s. J.P. Finance had certain dealings with some of the business units of Asopalav Group. So as to have more particulars and details, it was decided to have survey under the provisions of sec.133A of the Act at the premises owned by the partners of M/s. J.P. Finance. Necessary orders for survey had already been passed at the time when search had taken place under sec. 132 of the Act at the residence of Shri Pravinbhai Kakkad.

6. Learned advocate Shri J.P. Shah appearing for the petitioners has submitted that satisfaction as required under the provisions of sec. 132 of the Act had not been recorded by respondent No. 1 before issuance of authorization to respondent No. 2. It has been submitted by him that there was no justifiable reason for having a search at the residential premises of the petitioners especially in view of the fact that necessary orders to have survey under the provisions of sec. 133A of the Act had already been passed by the respondent authorities. It has been submitted by him that the decision to have search was been taken without any application of mind and without fulfilling the conditions incorporated in sec. 132 of the Act.

7. In pursuance of notice issued to the respondents, Shri S.N. Shelat, Advocate General, has appeared and has tried to justify the authorization issued by the Addl. Director of Income-tax (Investigation) in favour of respondent No. 2 for the purpose of having search at the residence of the petitioners. It has been submitted by him that the petitioners are associated with M/s. J.P. Finance, which is having business dealings with Asopalav Group of business units. It has been submitted by him that search had been conducted at the business premises and residential premises of all partners connected with Asopalav Group and when, in the course of the search at the residence of Shri Pravinbhai Kakkad, it was found

that he was having cash of Rs. 4,50,000/-, which, according to him, belonged to J.P. Finance, it was thought it proper to issue authorization for search of the residence of the petitioners. He has shown the relevant record dealing with the satisfaction of respondent No. 1 and has submitted that the impugned action of the respondent authorities is just, legal and proper.

8. We have heard the learned advocates and have also perused the record showing satisfaction of respondent No. 1. We have also considered the judgments cited by both the sides and as we accept the ratio of the judgments cited by them, we do not think it necessary to narrate the same as number of judgments have been referred to by the learned advocates.

9. So far as the facts are concerned, we may state here that upon perusal of the satisfaction note, we are not convinced that there was any justifiable reason for having a search at the residences of the petitioners.

10. After having searched the residence of Shri Pravinbhai Kakkad, the respondent authorities had found a sum of Rs. 4,50,000/- and the said amount was said to be belonging to M/s. J.P. Finance. Upon knowing the said fact, respondent No. 1 was informed about the existence of cash at the residence of Shri Pravinbhai Kakkad and, therefore, upon recording the facts, authorization was given to respondent No. 2 by the Addl. Director of Income-tax (Investigation) for carrying out search at the residence of the petitioners. It has been recorded by respondent No. 1 in pursuance of a note submitted by respondent No. 2 that in view of the information received by him, summons or notice under sec. 142(1) or search under sec. 133A of the Act would not serve any purpose and therefore he directed issuance of the authorization in favour of respondent No. 2 on the basis of information supplied to him by respondent No. 2. Upon perusal of the note submitted to respondent No 1 it is clear that the information which was placed before respondent No. 1 to the effect that Shri Jigneshbhai Kakkad was one of the partners of M/s. J.P. Finance and was residing at 3, Vraj Vihar Flats, Beh. Navrangpura Post Office, Ahmedabad. It has been also recorded that J.P. Finance had also been covered by an order under sec. 133A so as to have survey at the premises of J.P. Finance. It was further recorded that some other incriminating documents were likely to be found at the premises referred to hereinabove i.e. 3, Vraj Vihar Flats, Beh. Navrangpura Post Office, Ahmedabad, but

there was nothing to show as to why he believed that incriminating documents would be found at the residence of the petitioners. Moreover, it was open to the respondent authorities to have survey at the premises belonging to M/s. J.P. Finance, where the petitioners were doing their business, as necessary order under sec.133A of the Act had already been passed.

11. Upon perusal of the above-referred note submitted by respondent No. 2 and the satisfaction recorded by respondent No. 1, we are of the view that there is no justifiable reason for having search under the provisions of sec. 132 of the Act at the residence of the petitioners. The condition precedent referred to in sec. 132 of the Act has not been satisfied. No justifiable reason has been recorded for having search either by respondent No. 2 or by respondent No. 1 recording his satisfaction. In our opinion, simply because a sum of Rs. 4,50,000/- was found at the residence of Shri Pravinbhai Kakkad and simply because Shri Pravinbhai Kakkad is one of the partners of M/s. J.P. Finance, there was no justifiable reason to issue authorization by respondent No 1 in favour of respondent No. 2 for having search at the residence of the petitioners. In our opinion, the condition precedent for having search under the provisions of sec. 132 of the Act did not exist.

12. In view of the facts stated hereinabove, in our opinion, the authorization dated 21.6.2002 issued by the Addl. Director of Income-tax (Investigation) in favour of respondent No. 2 for having search at the residence, where the petitioners reside, does not appear to be legal and proper. In the circumstances, we consider the said satisfaction to have been arrived at in a mechanical manner and without any application of mind. We, therefore, quash and set aside the authorization dated 21.6.2002.

In the circumstances, the petitions are allowed. The impugned orders of issuing authorization are quashed and set aside. Rule is made absolute with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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